Allegro Properties, Inc. d/b/a The Hotel Syracuse/Radisson Plaza *and* Hotel Employees and Restaurant Employees Local 150, AFL–CIO, CLC. Case 3–CA–22348

August 31, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon a charge filed by the Union on February 14, 2000, the General Counsel of the National Labor Relations Board issued a complaint on May 24, 2000, against Allego Properties, Inc. d/b/a The Hotel Syracuse/Radisson Plaza, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 28, 2000, the General Counsel filed a Motion for Default Summary Judgment with the Board. On August 2, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 3, 2000, notified the Respondent that unless an answer were received by July 10, 2000, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Syracuse, New York, has been engaged in the operation of a hotel providing food and lodging. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of $500,000, and purchases and receives at its Syracuse, New York facility, products, goods, and materials valued in excess of $5000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> The unit described in Article I of the most recent collective-bargaining agreement between Respondent and the Union effective from November 1, 1999 through October 31, 2002.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the above unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 1999 through October 31, 2002.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

From on about August 1, 1999 through January 31, 2000, the Respondent failed to continue in full force and effect all of the terms and conditions of the collective-bargaining agreement described above by failing to remit to the Union deducted dues for the months of September, October, November, and December 1999, and January 2000, as required under article III of the agreement.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit

[1] In the complaint, the General Counsel seeks an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amounts due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form.

The Order makes clear that electronic documents, if they exist, must be supplied. See *Bryant & Stratton Business Institute*, 327 NLRB No. 174, slip op. 1 fn. 3 (1999). With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary records at the office designated by the Board or its agents, the Board has invited and received supplemental briefing on this issue in *Ferguson Electric Co.* Inc., 34–CA–7875, which is pending before the Board. We find no reason, however, to hold the instant case in abeyance or to defer consideration of the General Counsel's Motion for Summary Judgment until the issuance of the Board's decision in *Ferguson*. Accordingly, we will adhere to the Board's standard order language in the present case.

employees, and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union, without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct, and without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1), we shall order the Respondent to remit to the Union deducted union dues and fees for the months of September, October, November, and December 1999, and January 2000, owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to article III of the parties' collective-bargaining agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Allegro Properties, Inc. d/b/a The Hotel Syracuse/Radisson Plaza, Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in full force and effect all of the terms and conditions of its collective-bargaining agreement with Hotel Employees and Restaurant Employees Local 150, AFL–CIO, CLC by failing to remit to the Union, as required under article III of the agreement, dues for the months of September, October, November, and December 1999, and January 2000, deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by the employees. The appropriate bargaining unit is:

> The unit described in Article I of the most recent collective-bargaining agreement between Respondent and the Union effective from November 1, 1999 through October 31, 2002.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by employees and which have not been remitted for September, October, November, December 1999, and January 2000, with interest as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Syracuse, New York, copies of the attached notice marked "Appendix".[2] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 2000

Dated, Washington, D.C.

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to continue in full force and effect all of the terms and conditions of our collective-bargaining agreement with Hotel Employees and Restaurant Employees Local 150, AFL–CIO, CLC by failing to remit to the Union, as required under article III of the agreement, dues for the months of September, October, November, and December 1999, and January 2000, deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by the employees. The appropriate bargaining unit is:

> The unit described in Article I of the most recent collective-bargaining agreement between us and the Union effective from November 1, 1999 through October 31, 2002.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by the employees and which have not been remitted for September, October, November, December 1999, and January 2000, with interest.

ALLEGRO PROPERTIES, INC. D/B/A THE HOTEL SYRACUSE/RADISSON PLAZA